

REMARKS

The Applicant and the undersigned thank Examiner Blevins for a careful review of the present application. Consideration of this application is respectfully requested in view of the following remarks, which are responsive to the final Official Action mailed November 21, 2006.

Status of the Claims

Upon entry of this Amendment, Claims 8-11, 17, 18, 21, and 31-37 are pending in the present application. Claims 1-7, 12-16, 19, 20, and 22-30 have been canceled. Claims 8, 9, 10, 11, 17, 18, 21, and 31 are the independent claims. The Examiner has rejected Claims 2, 5, 10, 11, and 17. The Examiner has objected to Claims 8, 9, 18, 31-37. Without adding new matter, the Applicant has amended Claims 8-11, 17, 18, 21, and 31.

Continued Examination Under 37 CFR 1.114

Box 2a on the Official Action Summary has been checked, implying that the Official Action is final. However, the Official Action is responsive to a communication received in the USPTO on October 10, 2006, which was a Request for Continued Examination as addressed on page 2 of the Official Action. As such, the Applicant respectfully submits that box 2a was checked in error and that box 2b should be checked instead, clearly indicating that the Official Action is non-final. Accordingly, the Applicant courteously requests for the Examiner to retract the final designation and to indicate the retraction in the next Official Action.

Allowable Subject Matter – Claim 8

The Examiner has objected to Claim 8 as being dependent upon a rejected base claim, but provided that Claim 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 8 was dependent upon Claim 2 via intervening Claim 5. Claim 8 has been amended herein to include all of the limitations of the previous base Claim 2 the previous intervening Claim 5. Claims 2 and 5 have been canceled herein. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending objection to Claim 8.

Allowable Subject Matter – Claim 9

The Examiner has objected to Claim 9 as being dependent upon a rejected base claim, but provided that Claim 9 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 9 was dependent upon Claim 2 only. Claim 9 has been amended herein to include all of the limitations of the previous base Claim 2. Claim 2 has been canceled herein. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending objection to Claim 9.

Allowable Subject Matter – Claims 17 and 32-37

The Examiner has objected to Claims 32-37 as being dependent upon a rejected base claim, but provided that Claims 32-37 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 32-37 were dependent upon Claim 17 only. Claim 17 has been amended herein to include all of the limitations of Claims 32-37 combined into a Markush group. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending rejection of Claim 17.

Additionally, Claims 32-37 depend upon Claim 17, each further limiting Claim 17 to a single element of the Markush group. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending objections of Claims 32-37.

Allowable Subject Matter – Claim 18

The Examiner has objected to Claim 18 as being dependent upon a rejected base claim, but provided that Claim 18 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 18 was dependent upon Claim 17 only. Claim 18 has been amended herein to include all of the limitations of the previous base Claim 17. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending objection to Claim 18.

Allowable Subject Matter – Claim 31

The Examiner objected to Claim 31 as being dependent upon a rejected base claim, but provided that Claim 31 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 31 was only dependent upon Claim 10. Claim 31 has been amended herein to include all of the limitations of the previous base Claim 10. Accordingly, the Applicant courteously requests the Examiner to withdraw the pending objection to Claim 31.

Dependent Claims 5, 8, 17, 18, and 32-37

The Applicant respectfully submits that the above-identified dependent claims are allowable because, as amended, they each depend, either directly or indirectly, upon Claim 9. As discussed above, Claim 9 is patentable over the cited references. The Applicant also respectfully submits that the recitations of the dependent claims, as amended, are of patentable significance.

In view of the foregoing, the Applicant respectfully requests that the Examiner withdraw the respective pending rejections or objections related to dependent Claims 5, 8, 17, 18, and 32-37 as amended herein.

Amended Claim 10 is Patentable over the Cited Art

The Examiner rejected Claim 10 under 35 U.S.C. § 103(a) based on an assertion that Claim 10 is unpatentable over U.S. Patent Number 4,898,451 to Story (hereinafter “*Story*”) in view of U.S. Patent Number 6,208,790 to Zopf et al. (hereinafter “*Zopf*”) and in view of U.S. Patent Number 6,661,956 to Yamasaki et al. (hereinafter “*Yamasaki*”).

As amended, independent Claim 10 requires that: (i) at least two buffer tubes have common identifier marks; (ii) at least two filling materials have a common color; and (iii) at least two optical fibers have a common color. The Applicant respectfully submits that *Story*, *Zopf*, and *Yamasaki* do not render amended Claim 10 obvious at least because amended Claim 10 recites one or more features that are not disclosed, not taught, and not suggested by *Story*, *Zopf*, and *Yamasaki*, or by a hypothetical combination thereof. Moreover, amended Claim 10 recites a

combination of features that *Story*, *Zopf*, and *Yamasaki* do not individually or in combination disclose.

The Applicant agrees with the Examiner's characterization of the cited art that follows for the Examiner's convenience, and respectfully submits that the characterization provides analogous support for the nonobviousness of the invention of amended Claim 10.

[T]he prior art, either individually or in combination, fails to disclose or render obvious that at least two buffer tubes have a common color, at least two buffer tubes are filled with a common color-coded filling material, and at least two optical fibers have a common color.

In contrast to the cited art, amended Claim 10 requires three levels of color-coded identification that support identifying individual fibers in like-colored buffer tubes or buffer tubes having like-colored filling. Moreover, amended Claim 10 requires two commonly colored buffer tubes, two commonly colored fibers, and two commonly colored filling materials.

The Examiner has asserted that "Story also teaches color-coded fibers (column 1, lines 5-28)." The Applicant respectfully disagrees with the Examiner and submits that *Story* in fact discusses color-coded fibers at lines 5-28 of column 1 to point out problems with color-coded fibers that his technology attempts to avoid by not using color-coded fibers.

Accordingly, the Applicant respectfully submits that the disclosure, teachings, and suggestions of *Story* contrast with the recitations of Claim 10, as amended, and that *Story* teaches away from the claimed invention rather than providing a suggestion to combine color-coded fibers, color-coded buffer tubes, and color-coded filling materials. More specifically, the Applicant submits that *Story* teaches fibers, in which all the fibers are of the same color, not color-coded fibers as required by amended Claim 10.

For the Examiner's convenience, recitations of *Story* supporting this position (lines 13-23 of column 1 and lines 16-23 of column 2) follow, with underlines added for emphasis.

Known prior art suggests color coding of the plastic surrounding the individual fibers and/or colored tapes grouping individual fibers in a common bundle. While colored fibers have been widely accepted by craftsman as a means of fiber identification, colored tapes or threads used for bundle or group identification have not been without complaints. It would be desirable to group 48 fibers into

four separate groups, the fibers in each group having a fiber coating of the same color as a fiber in another group. ... Wax can be readily and easily colored, thus giving rise to an easy and convenient way to identify the group to which fibers in a given buffer tube belong. Colored wax permits coated optical fibers of the same color to be used in a given cable construction, yet providing a convenient device to distinguish fibers of the same color from one another.

In summary, the Applicant respectfully submits that the cited references fail to disclose a cable with three levels of color-coded identification as required by amended Claim 10 and further that the cited references, if combined as alleged, would not yield the claimed invention. Accordingly, the Applicant submits that amended Claim 10 is allowable over the cited references and respectfully requests such allowance.

Amended Claim 11 is Patentable over the Cited Art

The Examiner rejected Claim 11 under 35 U.S.C. § 103(a) based on an assertion that Claim 11 is unpatentable over *Story* in view of *Zopf* and in view of *Yamasaki*.

As amended, independent Claim 11 requires that: (i) at least two buffer tube have common identifying band markings; (ii) at least two buffer tube have a common color code; and (iii) at least two filling materials have a common color. The Applicant respectfully submits that *Story*, *Zopf*, and *Yamasaki* do not render amended Claim 11 obvious at least because amended Claim 11 recites one or more features that are not disclosed, not taught, and not suggested by *Story*, *Zopf*, and *Yamasaki*, or by a hypothetical combination thereof. Moreover, amended Claim 11 recites a combination of features that *Story*, *Zopf*, and *Yamasaki* do not individually or in combination disclose.

The same arguments used with respect to the three-dimensional color-coding of Claim 10 above apply here where one of the coding dimensions is provided by the identifying band markings of the buffer tubes.

In summary, the Applicant respectfully submits that the cited references fail to disclose a cable with three levels of color-coded identification as required by amended Claim 11 and further that the cited references, if combined as alleged, would not yield the claimed invention.

Accordingly, the Applicant submits that amended Claim 11 is allowable over the cited references and respectfully requests such allowance.

Election/Restriction

The Examiner has entered a restriction, constructive election, and thus withdrawal of Claim 21 as amended in the previous response dated August 7, 2006. The Examiner was apparently concerned that Claim 21 was amended to a “production method” instead of the previously examined “method for using a product”. Claim 21 is amended herein to once again recite a “method for using a product” since the Examiner has indicated that such a method is examinable. As such, Applicant respectfully requests Examiner to withdraw the constructive election against Claim 21 and to consider Claim 21 on its merits. Further, the Applicant submits that amended Claim 21 is allowable over the cited references and respectfully requests such allowance.

[This area has been intentionally left blank.]

CONCLUSION

The foregoing is submitted as a full and complete response to the Official Action mailed November 21, 2006. The Applicant thanks Examiner Blevins for consideration of the amendments and remarks presented by this paper. The Applicant has shown that the pending claims are allowable, and allowance of the claims is respectfully requested. It is believed that this response places the application in condition for allowance. Such action is courteously requested. If there are any issues that can be resolved with an Examiner's Amendment or a telephone conference, a telephone call to the undersigned at 404.572.3486 is respectfully requested.

Respectfully submitted,

/MLW/

Michael L. Wach

Reg. No. 54,517

King & Spalding LLP
35th Floor
1180 Peachtree Street
Atlanta, Georgia 30309
404.572.4600